

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**HOLESINGER GRAIN AND  
LIVESTOCK, LTD, an Illinois  
Corporation**  
Clinton County, IA

ADMINISTRATIVE CONSENT ORDER  
NO. 200~~8~~<sup>9</sup>-AFO-03

TO: Doug Holesinger  
16640 Sand Road  
Fulton, IL 61252

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Holesinger Grain and Livestock, Ltd. for the purpose of resolving violations pertaining to a prohibited commercial manure application. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Josh Sobaski, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, IA 52353  
Phone: 319/653-2856

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part I and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: HOLESINGER GRAIN AND LIVESTOCK

**III. STATEMENT OF FACTS**

1. Holesinger Grain and Livestock, LTD (Holesinger) is an Illinois corporation located in Fulton, IL. Holesinger is in the business of commercial manure application. Doug Holesinger is an agent and secretary of Holesinger.

2. Iowa law requires manure applicators in Iowa to be certified. Producers who remove and land apply manure from a confinement feeding operation with an animal unit capacity of more than 500 animal units must be certified or use a commercial manure applicator. Producers with small animal feeding operations (500 or less animal unit capacity) or open feedlots may land apply manure without being certified.

3. L & M Hogs LLC (L & M) is a swine confinement facility located at 4157 200<sup>th</sup> Street, Clinton, Iowa. The facility is located in Section 29, Hampshire Township, Clinton County, Iowa. The operation consists of approximately 960 animal units and it not classified as a small animal feeding operation.

4. On May 11, 2007, Josh Sobaski, environmental specialist for DNR Field Office 6, performed a Manure Management Plan Compliance Review for the L & M facility. Don Burken, a registered agent of L & M, was present during this review. Mr. Burken indicated that Holesinger was the entity that hauled manure from the L & M facility in 2006. L & M paid Holesinger \$5,106.00 for the services Holesinger rendered.

5. Holesinger is not certified to apply manure in the State of Iowa and is not properly certified to apply manure from the L & M confinement feeding operation.

6. On June 6, 2007, DNR Field Office 6 issued a Notice of Violation letter to Holesinger Grain and Livestock in care of Doug Holesinger. The letter cited Holesinger for failure to obtain proper certification. The letter informed Mr. Holesinger the matter was being referred for review and enforcement action.

**IV. CONCLUSIONS OF LAW**

1. 567 IAC 65.19 (1) states that a commercial manure service, a commercial manure service representative, or a confinement site manure site applicator shall not apply dry or liquid manure to land, unless the person is certified. Mr. Holesinger is not properly certified to apply manure in the State of Iowa from the L & M confinement feeding operation. The above-facts indicate a violation of this provision

**V. ORDER**

THEREFORE, the DNR orders and Holesinger agrees to do the following:

1. Pay an administrative penalty of \$2,500.00, within 60 days of the date the Director signs this administrative consent order; and

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: HOLESINGER GRAIN AND LIVESTOCK

2. Pay applicable certification fees for 2006 and comply with manure applicator certification requirements in the future.

**VI. PENALTY**

1. Iowa Code sections 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Holesinger gained an economic benefit over certified applicators. Holesinger saved time and money by not completing applicable certification training/testing and by not paying all applicable certification fees. Holesinger was paid over \$5,000.00 for manure application L&M. Therefore, \$500.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The certification program is an important component of the regulatory laws relating to animal feeding operation, and failure to comply threatens the integrity of this program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – All commercial manure applicators have a duty to remain knowledgeable of the DNR's requirements. Moreover, the certification requirements have been widely publicized in this industry. Therefore, \$500.00 is assessed for this factor.

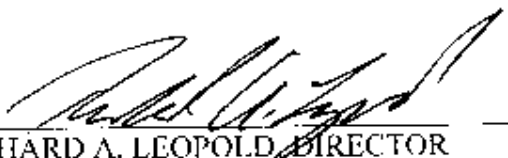
**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Holesinger. For that reason Holesinger waives its rights to appeal this administrative consent order or any part thereof.

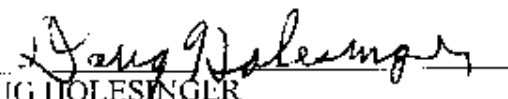
IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: HOLESINGER GRAIN AND LIVESTOCK

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18 day of  
Jan, 2008.

  
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DOUG HOLESINGER  
Holesinger Grain and Livestock, Ltd.

Dated this 27<sup>th</sup> day of  
December, 2007.

No facility #: Kelli Book, Josh Sobaski, Ken Hassenius, Gene Tinker, EPA, VIII.D.4

STATE OF IOWA  
COMMERCIAL MANURE SERVICE

*HOLESINGER GRAIN & LIVESTOCK*

is licensed in accordance with State law to operate as a Commercial Manure Applicator Service.

License number: 1550CMS  
License expires March 01, 2008



Given under the hands  
of the Iowa Department of Natural  
Resources on November 20, 2007

For the Director:

A handwritten signature in dark ink, appearing to read "Jeff Prier", written over a horizontal line.

Jeff Prier

THIS CERTIFICATE REMAINS THE PROPERTY OF THE DEPARTMENT